

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----  
JENNIFER A. ZURENDA,

Plaintiff,

v.

10-CV-0882

CARDIOLOGY ASSOCIATES, P.C.,

Defendant.  
-----

THOMAS J. McAVOY  
Sr. U.S. District Judge

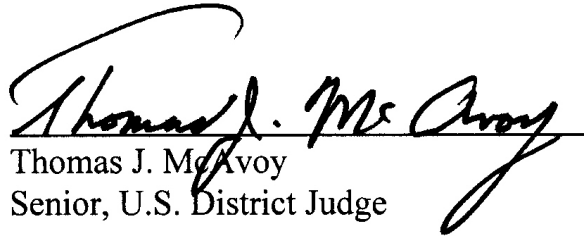
**DECISION and ORDER**

Before the Court is Defendant's motion to dismiss under Fed. R. Civ. P. 12(b)(6) or, in the alternative, for summary judgment under Fed. R. Civ. P. 56 seeking to dismiss the action on the basis that it is untimely. Plaintiff filed an affidavit in opposition of the motion asserting that the action is timely. In response to Plaintiff's affidavit, Defendant filed an affidavit asserting that it "cannot maintain the motion in good faith at this time and asks the Court [to] deny [Defendant's motion to dismiss] without prejudice to refiling after discovery." Dkt. 13 at 2. Defendant asks the Court to do so because "it appears that Plaintiff's original Complaint was arguably timely." Without deciding the timeliness of Plaintiff's action, the Court grants Defendant's motion to withdraw its motion to dismiss.

It is, therefore, **ORDERED** that Defendant's motion to dismiss, or in the alternative for summary judgment (Dkt. 10), is **DENIED without prejudice** and Defendant's motion to withdraw the motion to dismiss (Dkt. No. 13) is **GRANTED**.

IT IS SO ORDERED.

Dated: March 1, 2011

  
Thomas J. McAvoy  
Senior, U.S. District Judge